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No. 94-1155

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

JENNIFER LEE HIATT,
Petitioner,

v.

INDIANA STATE STUDENT ASSISTANCE COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the five year nondischargeability period imposed by 11 U.S.C. section 523 (a)(8)(A) commences from the repayment date of the original student loans or from the repayment date of the subsequent, consolidated student loan obtained pursuant to 20 U.S.C. section 1078-3.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Indiana State Student Assistance Commission, hereby opposes Jennifer Lee Hiatt's Petition for a Writ of Certiorari to the Court of Appeals for the Seventh Circuit.

STATEMENT OF THE CASE

Between 1983 and 1985, Hiatt executed separate and distinct guaranteed student loans which were made, insured,

or guaranteed under a program funded and administered by the Respondent, the Indiana State Student Assistance Commission. A-2. All of the original student loans entered into their repayment cycle and otherwise became due and owing on or about January 5, 1986. B-2. On July 23, 1987, Hiatt voluntarily elected to participate in the United States Department of Education's consolidated student loan program pursuant to 20 U.S.C. section 1078-3 and undertook a student loan consolidation of all of her original guaranteed student loans. A-2. The aggregate total of the loan consolidation was $12,101.48.

The proceeds from Hiatt's consolidated student loan extinguished the balance owing on her original student loans and the original notes were stamped with the "paid-in-full" designation.

Hiatt's original notes were subsequently canceled and all obligations associated with the original notes were extinguished. See A-2. Hiatt's consolidated student loan first became due and owing on or about September 20, 1987. A-2.

On May 24, 1991, Hiatt filed a bankruptcy petition pursuant to Chapter 7 of the United States Bankruptcy Code. A-2. Hiatt subsequently initiated an adversary complaint against the Respondent seeking a determination of the dischargeability of her student loan obligation pursuant to 11 U.S.C. section 523 (a)(8)(A). A-2 to A-3. Hiatt contended at trial that her student loan was dischargeable because her bankruptcy petition was filed more than five years after her original student loan notes had entered their repayment cycle. The

Commission argued that the original loan debt had been extinguished by the execution of the consolidated student loan and, therefore, the only debt remaining before the court was Hiatt's consolidated student loan. The consolidated student loan began its repayment cycle within five years of the filing of Hiatt's bankruptcy petition and was, therefore, not dischargeable under section 523 (a)(8)(A).

On December 3, 1992, The Bankruptcy Court denied Hiatt's motion for summary judgment and held Hiatt's consolidated student loan obligation to the Commission was not dischargeable. C-8 to C-9. The District Court affirmed, rejecting Hiatt's argument that the nondischargeability period should be computed from the repayment date of the original student loans. B-19. The

District Court agreed with the argument put forth by the Commission that the plain language of section 523(a)(8)(A) required the court to focus on the loan obligation currently before the court, which was the consolidated student loan and not the original notes. B-9 to B-12.

The Court of Appeals affirmed, also rejecting Hiatt's argument. A-7. The court concurred with the Commission's argument that the plain meaning of section 523(a)(8)(A) identified the consolidated loan as the sole remaining student loan obligation and this interpretation would further the intent of Congress to curb abuse and promote the viability of the student loan program. A-6.

REASONS FOR DENYING THE WRIT OF CERTIORARI

This case presents no conflict among United States Courts of Appeals. No other Court of Appeals has ruled on the issue Hiatt presents. Moreover, the Seventh Circuit's opinion is consistent with the vast majority of bankruptcy court decisions and district court decisions since the issue was first addressed in 1992.

The Seventh Circuit's decision will ensure that the consolidated student loan, which is a guaranteed government student loan within the meaning of section 523(a)(8)(A), is in repayment for at least five years. Thus, the decision of the Seventh Circuit is proper because it furthers the intent of Congress to curb abuse of the bankruptcy system and to secure the viability of the federal

guaranteed student loan program for future student borrowers. In addition, the Seventh Circuit's interpretation of the plain meaning of section 523(a)(8)(A) promotes the uniform and equal treatment of all student loan debtors filing bankruptcy petitions. Student loan debtors will not be allowed to eradicate the troublesome portions of their old notes, participate and derive a benefit from additional guaranteed student loan programs and later claim the favorable repayment dates of the old extinguished notes in bankruptcy.

I. THIS CASE PRESENTS NO CONFLICT AMONG UNITED STATES COURTS OF APPEALS.

This case presents no conflict among the United States Courts of Appeals, so certiorari is not appropriate under Sup.Ct.R. 10.1(a). No other Court of

Appeals yet has addressed the question presented in this Petition. The Seventh Circuit's decision is consistent with the interpretation of 11 U.S.C. section 523 (a)(8)~~(A)~~ put forth by unanimously bankruptcy courts and district courts which have specifically addressed the question presented.

The question of whether the five year nondischargeability period should begin with the repayment date of original student loans or with the repayment date of consolidated student loans was not specifically addressed by bankruptcy courts and district courts until approximately 1992. The court in In re Saburah, 136 B.R. 246 (Bank. C.D. Cal. 1992), was one of the first trial courts to address the issue, and the court held that the date the consolidated student loan first became due began the

five year nondischargeability period and not the repayment date of the original student loans. The Seventh Circuit's decision is consistent with the decision in In re Saburah and with several other cases that have addressed the question. *See, e.g.,* In re Martin, 137 B.R. 770 (Bankr. W.D. Mo. 1992); In re McKinney II, 1992 U.S. Dist. Lexis 14796, *rev'g* In re McKinney I, 120 B.R. 416 (Bankr. N.D. Ohio 1990); United States v. McGrath, 143 B.R. 820 (D. Md. 1992).

Hiatt's statement that the Seventh Circuit's decision was contrary to the vast majority of bankruptcy court decisions is wrong. The cases cited by Hiatt do not in fact address the question presented in this case and, therefore, are not relevant to the issue at hand. *See, e.g.,* In re Brown, 4 B.R. 745

(Bankr. E. D. Va. 1980)(court determined that the five year nondischargeability period begins to run on the date on which a student borrower's original notes first became due, not the date of default on a subsequent installment note, at which point the entire balance became due); In re Ziglar, 19 B.R. 298 (Bankr. E.D. Va. 1982)(dispositive issue was whether a particular loan was an "educational loan" within the meaning of section 523(a)(8)(A)); In re Washington, 41 B.R. 211 (Bankr. E.D. Va. 1984)(exception to discharge for student loans did not apply to co-makers who were not student borrowers); In re Hogan, 43 B.R. 117 (Bankr. D. Az. 1984)(dispositive issue was whether scholarship funds were covered by section 523 (a)(8)(A)); Elmira College v. Savercool, 51 B.R. 180 (W.D. N.Y. 1985)(court addressed the undue

hardship exception of section 523 (a)(8)); In re Barciz, 123 B.R. 771 (Bankr. N.D. Ohio 1990)(court considered whether an alteration of the terms of an educational loan constituted a "suspension of the repayment period").

The only bankruptcy court case cited by Hiatt, In re McKinney, 120 B,R, 416 (Bankr. N.D. Ohio 1990), that provides direct support for her position is not good law. The district court in McKinney II promptly reversed the bankruptcy court's decision on which Hiatt relies and stated the bankruptcy court had failed to consider that the original loans had been repaid in full by the consolidated student loan. The district court further stated that section 523(a)(8)(A)'s reference to "such loan" meant the debt sought for discharge which was the consolidated

student loan, not the original notes.

Because no other United States Court of Appeals has ruled in conflict with the Seventh Circuit on this issue and because the Seventh Circuit's decision is consistent with the interpretation of section 523(a)(8)(A) as set forth by the vast majority of bankruptcy and district courts, this Court should deny Hiatt's Petition for Certiorari.

II. THE DECISION OF THE COURT OF APPEALS IS CORRECT.

The Seventh Circuit correctly decided that the five year nondischargeability period commenced on the date that the consolidated student loan first became due, not on the repayment date of the original notes. A-7. The interpretation of section 523(a)(8)(A) rendered by the Seventh

Circuit is consistent with the stated Congressional intent to curtail abuse and to promote the viability of the federal student loan program. Congress included student loans within the exception to the general rule of dischargeability because many student borrowers were filing for bankruptcy and obtaining a discharge of their student loans soon after graduation before making any meaningful attempts to repay their loan obligation. H.R. Rep. No. 595, 95th Cong., 1st Sess. 133 (1979). The inclusion of the five year nondischargeability period was a concentrated effort by Congress to maintain the loan program by curbing the abuse.

Hiatt has stated in her Petition that Congress intended to "simply delay" students from discharge. It has been well documented that the rationale of

Congress for the nondischargeability period was to assist in protecting the student loan program from abuse and secure its future viability. See Elmira College v. Savercool, 51 B.R. at 182; In re Martin, 137 B.R. at 773. The Court of Appeals' interpretation furthers the intent of Congress by ensuring that the consolidated student loan is in repayment for a minimum of five years, thus promoting the viability of the federal student loan program for future student borrowers.

Also, the Seventh Circuit's interpretation of the plain meaning of section 523(a)(8)(A) is proper. It does not create a two class system of debtors nor does it artificially extend the nondischargeability period, as Hiatt contends in her Petition. The Court of Appeals' decision effectively promotes

a uniform and equal treatment of student loan borrowers filing for bankruptcy. To this point, the bankruptcy court in In re Martin, 137 B.R. at 775, stated:

> It would be inequitable for the borrower to extinguish the old notes, eradicate the troublesome parts of the old loans, accept the significant benefits provided by the legislation, and then claim the favorable repayment dates of the old notes are still binding in bankruptcy. The trade-off for the benefits is both a waiver of defenses on the note and adjustment of the nondischargeability period from the date of the new obligation.

The decision of the Court of Appeals also has not artificially extended the nondischargeability period. The consolidated student loan is in fact a second government guaranteed student loan debt. And, as the bankruptcy court reasoned in In re Saburah, 136 B.R. at

252, if Congress has intended to use the repayment date of the original notes instead of the repayment date of the consolidated student loan notes, "then Congress could have and should have (either when originally drafting the 11 U.S.C. section 523 (a)(8)(A) or when amending the period from five to seven years) stated that such loan was dischargeable if such loan or any earlier loan on the same subject became due...". Congress has yet to propose or implement any such language either in the bankruptcy code or 20 U.S.C. section 1078-3, which established the consolidated student loan program.

The Court of Appeals' opinion is consistent with the stated intent of Congress to curb abuse and promote the viability of the student loan program. The Court of Appeals' decision also

furthers the equal treatment of student loan debtors and is consistent with the plain meaning of section 523 (a)(8)(A).

CONCLUSION

For reasons stated in this Opposition, this Court should deny the Petition for Certiorari.

Respectfully submitted,

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